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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 20-3-2007:—

BILL No. 41 OF 2007

A Bill to provide for promotion, development and orderly growth of the micro finance sector in rural and urban areas for providing an enabling environment for ensuring universal access to integrated financial services, especially to women and certain disadvantaged sections of the people, and thereby securing prosperity of such areas and regulation of the micro finance organisations not being regulated by any law for the time being in force and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Micro Financial Sector (Development and Regulation) Act, 2007.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title
and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "co-operative society" means a society as defined in clause (f) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981 and includes a co-operative society registered under the Multi-State Co-operative Societies Act, 2002 and mutually aided or mutual benefit co-operative society registered under any other law relating to co-operative societies for the time being in force in any State; 61 of 1981. 39 of 2002.

(b) "eligible client" means any member of a self-help group or a self-help group itself or any other groups formed for the purposes of providing micro finance services belonging to any one of the following categories, namely:—

(i) farmers owning not more than two hectares of agricultural land or such area of agricultural land as may be prescribed;

(ii) disadvantaged cultivators of agricultural land including oral lessees, tenants, share croppers;

(iii) landless labourers and migrant labourers;

(iv) artisans, micro entrepreneurs and persons engaged in small and tiny economic activities;

(v) women;

(vi) such other categories as may be prescribed;

(c) "financial assistance" means any loan, advance, grant or any guarantee given or any other credit facility extended in cash or kind with or without security or guarantee;

(d) "group" means any association of eligible clients formed either as self-help group or joint liability group or a group called by any other name for the purpose of providing thrift services and micro finance services to the individual members of such association;

(e) "micro finance organisation" means an organisation, other than a group established for the purpose of carrying on the business of extending micro finance services and includes the following:—

(i) a society registered under the Societies Registration Act, 1860 or any other State enactment governing such societies; 21 of 1860.

(ii) a trust created under the Indian Trust Act, 1882 or public trust registered under any State enactment governing trust for public, religious or charitable purposes; 2 of 1882.

(iii) a co-operative society or mutual benefit society or mutually aided society registered under any State enactment relating to such societies or any multi-State co-operative society registered under the Multi-State Co-operative Societies Act, 2002 but not including:— 39 of 2002.

(A) a co-operative bank as defined in clause (cc) of section 5 of the Banking Regulation Act, 1949; or 10 of 1949.

(B) a co-operative society engaged in agricultural operations or industrial activity or purchase or sale of any goods and services,

(f) "micro finance services" means—

(i) providing financial assistance, to an individual or an eligible client being under any of the sub-clauses (i) to (vi) of clause (b) either directly or through a group mechanism for—

(A) an amount, not exceeding rupees fifty thousand in aggregate per individual, for small and tiny enterprise, agriculture, allied activities (including for consumption purposes of such individual); or

(B) an amount not exceeding rupees one lakh fifty thousand in

aggregate per individual for housing purposes; or

(C) such other amounts, for any of the purposes mentioned in items (A) and (B) above or other purposes, as may be prescribed;

(ii) financial services to an eligible client or individual borrower under any of the sub-clauses (i) to (vi) of clause (b) through the business facilitator or business correspondent mechanism authorised by the scheduled banks or any such other agency as may be permitted by the Reserve Bank of India;

(iii) life insurance or general insurance services, and pension services which have been approved by the authority regulating such services;

(iv) any other services as may be specified by regulations made by the National Bank;

(g) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

(k) "Scheme" means the scheme framed under sub-section (1) of section 24;

(l) "thrift" means any monies collected, (other than in the form of current account or demand deposit) by a micro finance organisation from a group or by a group from its members through the group mechanism, not exceeding such amounts and subject to such other terms and conditions as may be prescribed;

(m) words and expressions used herein and not defined but defined in the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949 and the National Bank for Agriculture and Rural Development Act, 1981 shall have the same meanings respectively assigned to them in those Acts.

CHAPTER II

MICRO FINANCE DEVELOPMENT COUNCIL

3. The Central Government may, by notification, constitute a Council to be known as the Micro Finance Development Council, to advise the National Bank on formulation of policies, schemes and other measures required in the interest of orderly growth and development of the micro finance sector.

Constitution of Micro Finance Development Council.

4. The Micro Finance Development Council shall consist of the following members, namely:—

Composition of Micro Finance Development Council.

(a) a person of eminence, with experience in banking, rural credit and micro finance, to be nominated by the Central Government—Chairperson;

(b) two officers, not below the rank of Joint Secretary to the Government of India, one each to be nominated by the Ministry of Finance and the Ministry of Rural Development—Members;

(c) an officer, not below the rank of an Executive Director of the Reserve Bank, to be nominated by it—Member;

(d) one of the directors, referred to in clause (b) of sub-section (1) of section 6 of the National Bank for Agriculture and Rural Development Act, 1981, to be nominated by the National Bank—Member;

61 of 1981

2 of 1934.

2 of 1934.
10 of 1949.
61 of 1981.

61 of 1981.

(e) an officer, not below the rank of an Executive Director of the Small Industries Development Bank of India established under the Small Industries Development Bank of India Act, 1989, to be nominated by it—Member;

39 of 1989.

(f) an officer, not below the rank of an Executive Director of the National Bank dealing with micro finance, to be nominated by it—Member;

(g) an officer, not below the rank of an Executive Director of the National Housing Bank established under the National Housing Bank Act, 1987, to be nominated by it—Member;

53 of 1987.

(h) not more than six persons, of whom at least two shall be women, to be nominated by the Central Government in consultation with the National Bank from amongst persons with experience in banking, rural credit and micro finance or the representatives of micro finance organisations or scheduled bank or any other institution providing thrift services or micro finance services—Members.

Functions of
Micro
Finance
Development
Council.

5. The Micro Finance Development Council shall advise the National Bank in matters relating to micro finance or on such other matters as may be referred to the Micro Finance Development Council by the National Bank.

Tenure and
allowances of
Members of
Development
Council.

6. A member of the Micro Finance Development Council shall hold office for such term not exceeding five years as the Central Government may fix, and, receive such fees and allowances as may be specified by regulations for attending the meetings of the Micro Finance Development Council.

Meetings of
Micro
Finance
Development
Council.

7. The Micro Finance Development Council shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be specified by regulations.

CHAPTER III

REGISTRATION OF MICRO FINANCE ORGANISATIONS

Prohibition
to commence
or carry on
business of
offering thrift
services to
eligible clients
in certain
cases.

8. Notwithstanding anything contained in the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949 and save as otherwise provided in this Act, no micro finance organisation, shall commence or carry on the business of offering thrift services to eligible clients without obtaining a certificate of registration from the National Bank under this Act.

2 of 1934

10 of 1949.

Application
for
registration.

9. (1) Every micro finance organisation which intends to commence the business of offering thrift services to eligible clients shall make an application for registration to the National Bank in such form and manner along with such fee as may be specified by regulations.

(2) If any micro finance organisation, in existence on the commencement of this Act and offering thrift services, intends to continue to do so, it shall before the expiry of six months from such commencement, apply in writing to the National Bank for obtaining a certificate of registration under this Act:

Provided that in the case of a micro finance organisation in existence on the commencement of this Act, nothing in sections 8 and 9, shall be deemed to prohibit such micro finance organisation from carrying on the business of a micro finance organisation, until it is granted a certificate of registration or is by notice in writing informed by the National Bank that a certificate of registration cannot be granted to it.

10. (1) The National Bank may, for the purpose of considering the application of a micro finance organisation for grant of certificate of registration to the business of offering thrift services to eligible clients, require to be satisfied by making an inspection of records or books of such micro finance organisation or otherwise, that the following conditions are fulfilled, namely:—

Grant of
certificate.

(a) that the general character of the management or the proposed management of the applicant micro finance organisation shall not be prejudicial to the interest of members of the group or eligible clients;

(b) that the grant of a certificate of registration to the applicant micro finance organisation is for promotion and development of micro finance sector;

(c) the net owned funds of the micro finance organisation are at least rupees five lakhs which have been created out of promoter's contributions or grants or donations received by the micro finance organisation;

(d) the micro finance organisation is in existence for at least three years on the day such micro finance organisation makes an application for grant of certificate of registration;

(e) any other condition which may be specified by regulations made by the National Bank.

(2) The National Bank may, after being satisfied that the conditions as referred to in sub-section (1) are fulfilled, grant a certificate of registration to the applicant micro finance organisation to commence or carry on the business of offering thrift services to eligible clients subject to such conditions which it may consider fit to impose:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

11. (1) The National Bank may cancel the certificate of registration granted to a micro finance organisation under sub-section (2) of section 10, if such micro finance organisation:—

Power of
National Bank
to cancel
certificate of
registration.

(i) ceases to carry on the business of offering thrift services to eligible clients;
or

(ii) has failed to comply with any of the conditions subject to which the certificate of registration has been granted to it; or

(iii) fails,—

(a) to comply with any direction issued by the National Bank under the provisions of this Act;

(b) to submit or offer for inspection its books of account and other relevant documents which so demanded by the officers, persons or agency referred to in sub-section (1) of section 21.

(2) Before cancelling the certificate of registration granted to a micro finance organisation under this section, the National Bank shall grant time to such micro finance organisation on such terms and conditions as the National Bank may deem appropriate for taking necessary steps to comply with such directions or fulfilment of such conditions, within the time granted by the National Bank:

Provided that if the National Bank is of the opinion that the delay in cancelling the certificate of registration of such micro finance organisation shall be prejudicial or detrimental to the public interest or banking policy or credit system or micro financial sector or eligible clients or an individual under any of the sub-clauses (i) to (vi) of clause (b) of section 2, the National Bank may cancel the certificate of registration without granting time.

Power to
prohibit
acceptance of
thrift.

12. If any micro finance organisation violates any provision of this Act or fails to comply with any direction given or order issued by the National Bank under this Act, the National Bank may prohibit the micro finance organisation from accepting any thrift subject to such conditions as the National Bank deems fit:

Provided that before passing any such order, the micro finance organisation shall be given a reasonable opportunity of being heard.

Appeal
against
certain cases

13. (1) A micro finance organisation aggrieved by the order of rejection of an application for grant of certificate of registration under section 10 or cancellation of certificate of registration under section 11, or an order prohibiting from acceptance of thrift under section 12 or an order for winding up of the micro finance organisation under sub-section (3) of section 21 may prefer an appeal to the Central Government or such other authority as the Central Government may, by notification specify, within a period of sixty days from the date on which such order of rejection or cancellation or prohibition from acceptance of thrift or winding up of the micro finance organisation, as the case may be, is communicated to the micro finance organisation.

(2) The decision of the Central Government or the authority referred to in sub-section (1) where an appeal has been preferred to it under sub-section (1), shall be final.

CHAPTER IV

RESERVE, ACCOUNTS, AUDIT AND RETURNS

Obligation to
create
Reserve Fund

14. (1) Every micro finance organisation registered with the National Bank under this Act for offering thrift services to members of groups through the group mechanism, shall create a reserve fund and transfer therein a sum, not less than fifteen per cent. of its net profit or surplus realised out of thrift services and micro finance services every year as disclosed in the profit and loss account or income and expenditure account before any dividend is declared or surplus is utilised for any other purpose.

(2) No appropriation of any sum from the reserve fund shall be made by the micro finance organisation except for the purpose, as may be specified by the National Bank from time to time, and every such appropriation shall be reported to the National Bank within twenty-one days from the date of such appropriation.

(3) The National Bank may, in the public interest or in the interest of the members contributing thrift, direct any micro finance organisation or any class of micro finance organisations providing thrift services to invest the whole or part of such reserve fund in such unencumbered securities, as it may, by regulations specify.

Accounts and
balance-sheet.

15. At the close of the financial year, every micro finance organisation providing thrift services in respect of thrift services and all other services transacted by it, shall prepare with reference to that year, a balance-sheet and profit and loss account or an income and expenditure account as on the last working day of the financial year, in such forms as may be specified by regulations made by the National Bank.

Audit.

16. The balance-sheet and profit and loss account or an income and expenditure account prepared in accordance with section 15 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies formed and registered under the Companies Act, 1956 or an auditor appointed by the Registrar of co-operative societies of the State.

1 of 1956.

Special audit.

17. (1) Without prejudice to anything contained in the Companies Act, 1956 or any other law for the time being in force, where the National Bank is of the opinion that it is necessary in the public interest or for the purpose of proper assessment of the records and books of account of the micro finance organisation accepting thrift or in the interest of its clients so to do, it may direct—

1 of 1956.

(a) the auditor of micro finance organisation accepting thrift to audit the accounts of the micro finance organisation in relation to any transaction or class of

transactions, or for such period or periods as may be specified in the order, and the auditor shall comply with such directions and make a report of the audit with such information as it may be asked to report by the National Bank to it and forward a copy thereof to the micro finance organisation;

(b) such micro finance organisation to appoint auditors, with the prior approval of the National Bank, for such period and subject to such conditions as the National Bank may specify from time to time.

1 of 1956.

10 of 1949.

(2) The auditor shall have the power of, to exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 227 of the Companies Act, 1956 and the auditors, if any, appointed by the law establishing, constituting or forming the banking company under the Banking Regulation Act, 1949.

(3) The expenses of, or incidental to, the audit specified in the order made by the National Bank under clause (a) of sub-section (1) shall be borne by the micro finance organisation concerned.

18. Save as otherwise provided in this Act, every micro finance organisation, whether engaged in providing thrift services or not at the commencement of this Act, shall within ninety days from the date of commencement of this Act, file with the National Bank a return containing particulars of its activities in such form and manner and thereafter at such intervals as may be specified by regulations, duly certified by a chartered accountant or a company secretary or an auditor appointed by the Registrar of Co-operative Societies of the State.

Returns to be
filed by micro
finance
organisations.

CHAPTER V

FUNCTIONS AND POWERS OF NATIONAL BANK IN RELATION TO THRIFT SERVICES AND MICRO FINANCE SERVICES

61 of 1981.

19. (1) Without prejudice to the provisions of the National Bank for Agriculture and Rural Development Act, 1981 and subject to the provisions of this Act, it shall be the duty of the National Bank to promote and ensure orderly growth of the micro financial sector by such measures as it may think fit.

Functions and
powers of
National
Bank.

(2) Without prejudice to the generality of the foregoing provisions contained in sub-section (1), the measures may provide for—

(a) formulating and facilitating formulation of appropriate policy for the orderly growth of the micro financial sector so as to ensure greater transparency, effective management, good governance and to facilitate the flow of thrift services and micro finance services in the most efficient manner;

(b) setting or facilitating the setting of sector related benchmarks and performance standards pertaining to methods of operation, methods of recovery, management and governance including model codes for conduct of business for micro finance organisations engaged in providing thrift services and micro finance services;

(c) facilitating the development of credit rating norms or rating norms for other purposes for micro finance organisations;

(d) specifying the form and manner of books of account to be maintained by micro finance organisations (other than those accepting thrift services);

(e) specifying the form and manner of accounting of business operations of micro finance organisations and auditing standards relating thereto;

(f) calling for information and data for the purposes of this Act from micro finance organisations for maintaining an appropriate data base in the public domain relating to micro finance sector and disseminating the same through a national dissemination network;

(g) facilitating institutional development of all entities, including groups, engaged in the provision of thrift services and micro finance services through training and capacity building measures;

(h) promoting customer education of all entities engaged in providing thrift services and micro finance services for greater awareness and for economic empowerment of micro finance clients;

(i) supporting sector related research, field research, documentation and dissemination thereof;

(j) co-ordinating with other agencies for orderly growth and development of entities in the micro financial sector;

(k) documenting and disseminating information relating to fair practices with a view to ensuring provision of thrift services and micro finance services at an affordable cost to eligible clients;

(l) perform such other functions as may be prescribed.

Power to
issue
directions to
micro finance
organisations
accepting
thrift.

20. (1) Where the National Bank is satisfied that, in the public interest or in the interest of the policy relating to micro finance organisations or to prevent the affairs of any micro finance organisation accepting thrift being conducted in a manner detrimental to the interests of the eligible clients thereof or in a manner prejudicial to the interest of the micro finance organisation or to secure the proper management of micro finance organisation, it is necessary to issue directions to such micro finance organisations generally or to any such micro finance organisation in particular, it may from time to time issue such directions as it deems fit, and the micro finance organisations or the micro finance organisation, as the case may be, shall be bound to comply with such directions.

(2) The National Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1) and in so modifying or cancelling any direction, the National Bank may impose such conditions as it thinks fit, subject to which such modification or cancellation shall have effect.

Inspection.

21. (1) The National Bank may, at any time, cause inspection to be made of any micro finance organisation whether accepting thrift or not, and its books of account by an inspecting authority approved by it in such manner and on such terms and conditions as may be specified by it and such inspecting authority shall submit a report to the National Bank in respect of inspection made by it.

(2) A copy of the report of the inspection shall be furnished to the micro finance organisation if—

(a) the micro finance organisation makes a request for the same; or

(b) if any action is contemplated against the micro finance organisation on the basis of such report.

(3) If the National Bank, after considering the report, is of the view that the affairs of any micro finance organisation are being conducted to the detriment of its eligible clients, it may after giving such opportunity to the micro finance organisation to make a representation in connection with the report, take such action as it deems appropriate including winding up of the micro finance operations of the organisation in accordance with the procedure which may be specified by regulations made by the National Bank.

CHAPTER VI

CONSTITUTION OF MICRO FINANCE DEVELOPMENT AND EQUITY FUND

Grants by
Central
Government.

22. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the National Bank, grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

23. (1) The National Bank shall constitute a fund to be called the Micro Finance Development and Equity Fund (hereafter called as 'the Fund') and there shall be credited thereto—

Fund.

- (a) all Government grants received and fees payable under this Act;
- (b) all sums that may be raised by the National Bank from donors, Governments, other entities, and public for the purpose of this Act;
- (c) any interest or other income received out of the investments made from the Fund under clause (c) of sub-section (3);
- (d) the balance outstanding in the Micro Finance Development and Equity Fund maintained by the National Bank, before the commencement of this Act, shall, after such commencement, stand transferred to the Fund.

(2) The Fund shall be managed by the Board of Directors of the National Bank in the manner as may be specified by regulations made by it.

(3) The Fund shall be applied—

- (a) to provide loans, refinance, grant, seed capital or any other financial assistance to any micro finance organisation or any other agency which the National Bank may specify in accordance with the regulations made by the National Bank;
- (b) to give grants or loans for training and capacity building of organisations engaged in micro finance services and personnel engaged in promoting and providing micro finance services and meeting other expenditure related to such training and capacity building on such terms and conditions as may be specified by regulations made by the National Bank;
- (c) to invest in equity or any other form of capital or quasi-equity of a micro finance organisation on such terms and conditions as may be specified by regulations made by the National Bank;
- (d) to meet the expenses in relation to collection, analysis, dissemination of information relating to micro finance, conduct of such research, experiments or studies as may be necessary, and to design, promote and propagate such practices as may be considered conducive to the growth of micro finance sector;
- (e) to meet any other expenses as may be required for the promotion of micro finance sector by the National Bank under the regulations made by the National Bank under this Act;
- (f) to meet any other expenses (except salaries, allowances and other remuneration of officers and other employees of the National Bank) of the National Bank in connection with discharge of its functions as may be specified by the regulations made under this Act.

CHAPTER VII

REDRESSAL MECHANISM

24. (1) The National Bank may, in consultation with the Micro Finance Development Council, if deemed necessary, appoint as many Micro Finance Ombudsman as it may deem fit in accordance with a scheme framed under this section, for the purpose of redressal of grievances between eligible clients and micro finance organisation with powers to issue directions to micro finance organisations.

Settlement of
disputes
through
Micro
Finance
Ombudsman.

(2) Any such scheme of Micro Finance Ombudsman may provide for the following:—

- (a) appointment, terms of office, conditions of service and location of office of the Ombudsman;

(b) nature of grievances and complaints that may be entertained by the Ombudsman and the procedures for redressal of grievances and complaints;

(c) any other matter that may be necessary for effective functioning of the Micro Finance Ombudsman.

CHAPTER VIII

OFFENCES AND PENALTIES

Penalties for making wilfully false statement.

25. (1) Whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provision of this Act, or any order, rule, regulation or direction made or given thereunder, wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(2) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any orders or rules or regulations or direction given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to twenty thousand rupees and where, a contravention or default is a continuing one, with a further fine, which may extend to one thousand rupees for everyday after the first, during which the contravention or default continues or with imprisonment for a term not exceeding two years or with both.

Penalties for contravention of section 12 or orders of Micro Finance Ombudsman.

26. (1) Whoever knowingly fails to comply with the provisions of section 12 or fails to comply with any order of the Micro Finance Ombudsman or of the orders made by the Central Government or other specified authority under section 13 of this Act shall be punishable with imprisonment which may extend to three years and shall also be liable to fine of not less than five hundred rupees for every day during which such non-compliance continues.

(2) Every offence connected with or arising out of acceptance of thrift or repayment thereof, shall be a cognizable offence under the Code of Criminal Procedure, 1973.

2 of 1974.

Offences by micro finance organisations.

27. (1) Where an offence under this Act is committed, the person who was in charge of, and was responsible to, the micro finance organisation for the conduct of business of the micro finance organisation, as well as the micro finance organisation itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a micro finance organisation and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any person who is or was a director, trustee, member of the managing committee, manager, secretary or other officer or employee of the micro finance organisation when the offence is or was committed, such person shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section, any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or principal office of the micro finance organisation, is situated.

Cognizance of offences by courts.

28. (1) No Court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by any officer of the National Bank or any other person authorised by the National Bank.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

CHAPTER IX

MISCELLANEOUS PROVISIONS

29. In the event of a micro finance organisation making any default in repayment of thrift to any of its members or eligible clients who had made a contribution to thrift, all members or eligible clients of such micro finance organisation shall have a first charge over the specified unencumbered securities referred to in sub-section (3) of section 14.

First charge over assets in favour of members.

30. The Central Government may, in consultation with the National Bank from time to time, require the furnishing of such returns, statements and such other particulars in regard to micro finance organisations in such form and in such manner as the Central Government may specify, and the micro finance organisations shall furnish to the Central Government such returns, statements and particulars.

Central Government's power to call for information.

31. The Central Government may, on being satisfied that in the public interest, or in the interest of the micro finance organisation, it is necessary so to do, by an order in writing declare that any or all of the provisions of this Act shall not apply to a micro finance organisation or a class of micro finance organisations, or to any class of micro finance organisations either generally or for such period as may be specified in the order, subject to such conditions, limitations or restrictions as it may think fit to impose.

Power to exempt.

32. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Provisions of this Act to override other laws.

33. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the area of agricultural land to be owned by farmers under sub-clause (i) of clause (b) of section 2;

(b) such other categories of individuals under clause (vi) of clause (b) of section 2;

(c) such other amounts and the other purposes under item (C) of sub-clause (i) of clause (f) of section 2;

(d) the amount and the terms and conditions under sub-clause (i) of section 2;

(e) such other functions as may be performed by the National Bank under clause (i) of sub-section (2) of section 19;

(f) any other matter which is required to be, or may be, prescribed.

34. (1) The National Bank, with the previous approval of the Central Government may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the fees and allowances payable to a member of the Micro Finance Development Council under section 6;

(b) the times and places at which the Micro Finance Development Council shall meet and observe such rules of procedure in regard to the transaction of business at its meetings under section 7;

(c) the form and manner in which every micro finance organisation shall make an application for registration and the fee payable to the National Bank under sub-section (1) of section 9;

(d) any other condition for grant of a certificate of registration under clause (e) of sub-section (1) of section 10;

(e) the unencumbered securities for the purpose of investment under sub-section (3) of section 14;

(f) the form in which the balance-sheet and profit and loss account or an income and expenditure account shall be prepared under section 15;

(g) the form and the manner of return may be filed with the National Bank under section 18;

(h) the procedure for winding up of the operations of the micro finance organisation under sub-section (3) of section 21;

(i) the manner of management of Micro Finance Development Fund by the Board of Directors of the National Bank under sub-section (2) of section 23;

(j) the terms and conditions on which the loans, refinance, grants, seed capital or any other financial assistance will be provided under clause (a) of sub-section (3) of section 23;

(k) the terms and conditions on which the grants or loans shall be given by the National Bank under clause (b) of sub-section (3) of section 23;

(l) the terms and conditions on which the investment in equity or any other form of capital or quasi-equity of a micro finance organisation shall be made under clause (c) of sub-section (3) of section 23;

(m) the other expenses (except salaries, allowances and other remuneration of officers and other employees of the National Bank) of the National Bank that shall be met in connection with discharge of its functions under clause (f) of sub-section (3) of section 23;

(n) such other matters for which the National Bank may consider it expedient or necessary to provide for by way of regulations.

Rules and regulations to be laid before Parliament.

35. Every rule made by the Central Government and every regulation made by the National Bank under this Act and any order of exemption made under section 31 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of other laws not barred.
Power to remove difficulties.

36. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

37. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The banking system in India has achieved significant growth in terms of average population per bank office, resulting in reducing the levels of credit gaps in the economy. But in spite of such growth many poor households do not still have access to basic financial services such as savings, credit and money transfer. The financial exclusion faced by poor people results in discrimination and denial of equal opportunities to them.

2. There are certain Non-Governmental Organisations, Societies, Trusts and Co-operative Societies operating in the micro financial sector that are engaged in providing credit and other financial services to the economically active low-income people especially women, poor households and their micro enterprises. But the financial activities undertaken by such organisations lack a formal statutory framework.

3. It is, therefore, considered necessary to enact a new law for the development and regulation of the micro financial sector. The salient features of the Bill are as follows:

(a) entrust the function of development and regulation of the micro financial sector to the National Bank for Agriculture and Rural Development (National Bank);

(b) define various entities engaged in the activity of micro finance such as co-operative societies, mutual benefit societies or mutually aided societies registered under any State enactments or multi-State co-operative societies registered under the Multi-State Co-operative Societies Act, 2002, societies registered under the Societies Registration Act, 1860 or any other State enactments governing such societies and a trust created under the Indian Trust Act, 1882 or public trust registered under any State enactments, that will be governed by the regulatory framework proposed to be set up;

(c) define various categories of beneficiaries of micro financial services as eligible clients including Self Help Groups (SHGs) or joint liability groups of such eligible clients;

(d) provide for extending micro financial services to eligible clients by way of financial assistance subject to ceilings to be prescribed and such other financial services as may be specified by the National Bank;

(e) provide for acceptance of thrift, i.e., savings of eligible clients other than in the form of current account or demand deposit account by micro finance organisations registered by the National Bank, subject to such terms and conditions as may be prescribed;

(f) provide for constitution of Micro Finance Development Council to advise the National Bank on formulation of policies, schemes and other measures required in the interest of orderly growth and development of the micro finance sector;

(g) provide for registration of Micro Finance Organisations to be permitted to collect thrift from individual members of SHGs or through a group mechanism;

(h) provide for creation of a reserve fund and maintenance of accounts and periodical returns to be submitted by micro finance organisations;

(i) provide for functions and powers of the National Bank in relation to thrift services and micro financial services;

(j) provide for constitution of Micro Finance Development and Equity Fund to be utilised for the development of micro finance sector;

(k) empower the National Bank to frame a scheme for appointment of one or more Micro Finance Ombudsman for settlement of disputes between eligible clients and micro finance organisations;

(l) provide for offences and penalties for non-compliance with the regulatory requirements of the Bill;

(m) to empower the Central Government to prescribe Rules for carrying out the purposes of the Bill;

(n) to empower the National Bank to make regulations with the previous approval of the Central Government for carrying out the purposes of the Bill.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 12th March, 2007.

P. CHIDAMBARAM.

Notes on clauses

Clause 2.— This clause seeks to define various expressions used in the Bill.

Clause 3.— This clause provides that the Central Government may, by notification, constitute a Council to be known as the Micro Finance Development Council, to advise the National Bank on formulation of policies, schemes and other measures required in the interest of orderly growth and development of the micro finance sector.

Clause 4.— This clause seeks to provide for the composition of the Micro Finance Development Council which shall consist of— (a) a person of eminence with experience in banking, rural credit and micro finance, to be nominated by the Central Government as Chairperson; (b) two officers, not below the rank of Joint Secretary to the Government of India, one each to be nominated by the Ministry of Finance and the Ministry of Rural Development as Members; (c) an officer, not below the rank of an Executive Director of the Reserve Bank, to be nominated by it as Member; (d) one of the directors, referred to in clause (b) of sub-section (1) of section 6 of the National Bank for Agriculture and Rural Development Act, 1981, to be nominated by the National Bank as Member; (e) an officer, not below the rank of an Executive Director of the Small Industries Development Bank of India established under the Small Industries Development Bank of India Act, 1989, to be nominated by it as Member; (f) an officer, not below the rank of an Executive Director of the National Bank dealing with micro finance, to be nominated by it as Member; (g) an officer, not below the rank of an Executive Director of the National Housing Bank established under the National Housing Bank Act, 1987, to be nominated by it as Member; (h) not more than six persons, of whom at least two shall be women, to be nominated by the Central Government in consultation with the National Bank from amongst persons with experience in banking, rural credit and micro finance or the representatives of micro finance organisations or scheduled bank or any other institution providing thrift services or micro finance services as Members.

Clause 5.— This clause provides that the Micro Finance Development Council shall advise the National Bank in matters relating to micro finance or on such other matters as may be referred to it by the National Bank.

Clause 6.— This clause provides that a member of the Micro Finance Development Council shall, hold office for such term not exceeding five years as the Central Government may fix, and, receive such fees and allowances as may be specified by regulations for attending the meetings of the Micro Finance Development Council.

Clause 7.— This clause states that the Micro Finance Development Council shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be specified by regulations.

Clause 8.— This clause prohibits commencement or carrying on business of offering thrift services to the eligible clients except by obtaining a certificate of registration from the National Bank.

Clause 9.— This clause provides that every micro finance organisation which intends to commence the business of offering thrift services to eligible clients shall make an application for registration to the National Bank. It further provides that if any micro finance organisation is in existence on the commencement of the proposed legislation and offering thrift services, intends to continue to do so, it shall before the expiry of six months from such commencement, apply in writing to the National Bank for obtaining a certificate of registration under the proposed legislation. However, in the case of a micro finance organisation in existence on the commencement of the proposed legislation, nothing in sections 8 and 9, shall be deemed to prohibit such micro finance organisation from carrying on the business of a micro finance organisation, until it is granted a certificate of registration or is by notice in writing informed by the National Bank that a certificate of registration cannot be granted to it.

Clause 10.— This clause contains provisions relating to grant of certificate of registration and the conditions for such registration. It provides that the National Bank may, for the

purpose of considering the application of a micro finance organisation for grant of certificate of registration to the business of offering thrift services to eligible clients, require to be satisfied by making an inspection of records or books of such micro organisation or otherwise the fulfilment of the conditions specified in the said clause.

It also provides that the National Bank may, after being satisfied that the conditions are fulfilled, grant a certificate of registration to the applicant micro finance organisation to commence or carry on the business of offering thrift services to eligible clients subject to such conditions which it may consider fit to impose. However, no application shall be rejected unless the applicant has been given an opportunity of being heard.

Clause 11.—This clause seeks to empower the National Bank to cancel the certificate of registration. It provides that the National Bank may cancel the certificate of registration granted to a micro finance organisation if such micro finance organisation— (i) ceases to carry on the business of offering thrift services to eligible clients, or (ii) has failed to comply with any of the conditions subject to which the certificate of registration has been granted to it, or (iii) fails,—(a) to comply with any direction issued by the National Bank under the provisions of the proposed legislation; (b) to submit or offer for inspection its books of account and other relevant documents. It further provides that before cancelling the certificate of registration granted to a micro finance organisation, the National Bank shall grant time to such micro finance organisation on such terms and conditions as the National Bank may deem appropriate for taking necessary steps to comply with such directions or fulfilment of such conditions, within the time granted by the National Bank. However, if the National Bank is of the opinion that the delay in cancelling the certificate of registration of such micro finance organisation shall be prejudicial or detrimental to the public interest or banking policy or credit system or micro financial sector or eligible clients or an individual under any of the sub-clauses (i) to (vi) of clause (b) of section 2, the National Bank may cancel the certificate of registration without granting time.

Clause 12.—This clause empowers the National Bank to prohibit acceptance of thrift by any micro finance organisation, which violates any provision of the proposed legislation or fails to comply with any direction or order issued by the National Bank. However, before passing any such order, the micro finance organisation shall be given a reasonable opportunity of being heard.

Clause 13.—This clause seeks to provide for an appeal to the Central Government or such authority as the Central Government may by notification specify, against the order of rejection of application for certificate of registration or cancellation of certificate of registration or an order prohibiting acceptance of thrift or an order for winding up of the micro finance organisation.

Clause 14.—This clause requires every micro finance organisation to create a reserve fund and transfer therein a sum, not less than fifteen per cent. of its net profit or surplus realised out of thrift services and micro finance services every year as disclosed in the profit and loss account or income and expenditure account before any dividend is declared or surplus is utilised for any other purpose. It provides that no appropriation of any sum from the reserve fund shall be made by the micro finance organisation except for the purpose, as may be specified by the National Bank from time to time, and every such appropriation shall be reported to the National Bank within twenty-one days from the date of such appropriation. It also provides that the National Bank may, in the public interest or in the interest of the members contributing thrift, direct any micro finance organisation or any class of micro finance organisations providing thrift services to invest the whole or part of such reserve fund in such unencumbered securities, as it may, by regulations specify.

Clause 15.— This clause provides that every micro finance organisation shall prepare a balance-sheet and profit and loss account or an income and expenditure account as on the last working day of the financial year, in such forms as may be specified by regulations made by the National Bank.

Clause 16.— This clause provides that the balance-sheet and profit and loss account or an income and expenditure account prepared in accordance with section 15 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies formed and registered under the Companies Act, 1956 or an auditor appointed by the Registrar of Co-operative Societies of the State.

Clause 17.— This clause seeks to provide for special audit of any micro finance organisation, if considered necessary by the National Bank in public interest or to protect the interest of clients of any micro finance organisation accepting thrift. The expenses of, or incidental to such audit shall be borne by the micro finance organisation concerned.

Clause 18.— This clause provides that every micro finance organisation, whether engaged in providing thrift services or not at the commencement of this Act, shall within ninety days from the date of commencement of the proposed legislation, file with the National Bank a return containing particulars of its activities in such form and manner and thereafter at such intervals as may be specified by regulations.

Clause 19.— This clause contains provisions relating to the functions and powers of National Bank. It shall be the duty of the National Bank to promote and ensure orderly growth of the micro financial sector by such measures specified in the said clause as it may think fit.

Clause 20.— This clause contains provisions relating to the powers of the National Bank to issue directions to micro finance organisations accepting thrift. It provides that the National Bank may, on representation made to it or on its own motion, modify or cancel any such direction and in so modifying or cancelling any direction, the National Bank may impose such conditions as it thinks fit and directions shall have effect subject to such modification.

Clause 21.— This clause provides that the National Bank may, at any time, cause inspection to be made of any micro finance organisation whether accepting thrift or not, and its books of account by an inspecting authority approved by it in such manner and on such terms and conditions as may be specified by it and such inspecting authority shall submit a report to the National Bank in respect of inspection made by it. It further provides that a copy of the report of the inspection shall be furnished to the micro finance organisation if— (a) the micro finance organisation makes a request for the same; or (b) if any action is contemplated against the micro finance organisation on the basis of such report. It also provides that if the National Bank, after considering the report, is of the view that the affairs of any micro finance organisation are being conducted to the detriment of its eligible clients, it may after giving such opportunity to the micro finance organisation to make a representation in connection with the report, take such action as it deems appropriate including winding up of the micro finance operations of the organisation in accordance with the procedure which may be specified by regulations made by the National Bank.

Clause 22.— This clause seeks to provide that the Central Government may, after due appropriation made by Parliament by law, make to the National Bank, grants of such sums of money as that Government may think fit for being utilised for the purposes of the proposed legislation.

Clause 23.— This clause provides that the National Bank shall constitute a Fund to be called the Micro Finance Development and Equity Fund (the Fund) and there shall be credited thereto — (a) all Government grants received, and fees payable under the proposed legislation; (b) all sums that may be raised by the National Bank from donors, Governments, other entities, and public for the purpose of the proposed legislation; (c) any interest or other income received out of investments made from the Fund; (d) the balance outstanding in the Micro Finance Development and Equity Fund maintained by the National Bank, before the commencement of the proposed legislation, shall, after such commencement, stand transferred to the Fund. It also provides that the Fund shall be managed by the Board of Directors of the National Bank in the manner as may be specified by regulations made by it. It further provides that the Fund shall be applied — (a) to provide loans, refinance, grant, seed capital or any other financial assistance to any micro finance organisation or any

other agency which the National Bank may specify in accordance with the regulations made by the National Bank; (b) to give grants or loans for training and capacity building of organisations engaged in micro finance services and personnel engaged in promoting and providing micro finance services and meeting other expenditure relating to such training and capacity building on such terms and conditions as may be specified by regulations made by the National Bank; (c) to invest in equity or any other form of capital or quasi-equity of a micro finance organisation on such terms and conditions as may be specified by regulations; (d) to meet the expenses in relation to collection, analysis, and dissemination of information relating to micro finance, conduct of such research, experiments or studies as may be necessary, and to design, promote, and propagate such practices as may be considered conducive to the growth of micro finance sector; (e) to meet any other expenses as may be required for the promotion of micro finance sector by the National Bank under the regulations made by the National Bank; (f) to meet any other expenses (except salaries, allowances and other remuneration of officers and other employees of the National Bank) of the National Bank in connection with discharge of its functions as may be specified by the regulations.

Clause 24.— This clause deals with the settlement of disputes through the Micro Finance Ombudsmen. It provides that the National Bank, may, in consultation with the Micro Finance Development Council, if deemed necessary, appoint as many Micro Finance Ombudsmen as it may deem fit in accordance with a scheme framed under this section, for the purpose of redressal of grievances between eligible clients and micro finance organisations with powers to issue directions to micro finance organisations. It also provides that any such scheme of Micro Finance Ombudsman may provide for — (a) appointment, terms of office, conditions of service and location of office of the Ombudsman; (b) nature of grievances and complaints that may be entertained by the Ombudsman and the procedures for redressal of grievances and complaints; (c) any other matter that may be necessary for effective functioning of the Micro Finance Ombudsman.

Clause 25.— This clause seeks to provide for penalties for making wilfully false statement in application, return, statement, information or particulars. It provides that whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes for any provision of this legislation, or any order, rule, regulation or direction made or given thereunder, wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine. It also provides that if any other provision of this legislation is contravened or if any default is made in complying with any other requirement of this legislation or of any order, rules or regulations or directions given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to twenty thousand rupees and where, a contravention or default is a continuing one, with a further fine, which may extend to one thousand rupees for every day after the first, during which the contravention or default continues or with imprisonment for a term not exceeding two years or with both.

Clause 26.— This clause seeks to provide penalties for contravention of section 12 or orders of the Micro Finance Ombudsman. It provides that whoever knowingly fails to comply with the provisions of section 12 or fails to comply with any order of the Micro Finance Ombudsman or of the orders made by the Central Government or other specified authority under section 13 of this legislation shall be punishable with imprisonment which may extend to three years and shall also be liable to fine of not less than five hundred rupees for every day during which such non-compliance continues. It further provides that every offence connected with or arising out of acceptance of thrift or repayment thereof, shall be a cognizable offence under the Code of Criminal Procedure, 1973.

Clause 27.— This clause contains provisions relating to offences by the micro finance organisation. It provides that where an offence under the proposed legislation is committed, the person who was in charge of, and was responsible to the micro finance organisation for

the conduct of business of the micro finance organisation, as well as the micro finance organisation itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. It also provides that where an offence under the proposed legislation has been committed by a micro finance organisation and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any person who is or was a director, trustee, member of the managing committee, manager, secretary or other officer or employee of the micro finance organisation when the offence is or was committed, such person shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 28.—This clause provides that no court shall take cognizance of any offence punishable under the proposed legislation or any rules or regulations made thereunder, save on a complaint made by any officer of the National Bank or any other person authorised by the National Bank.

Clause 29.—This clause seeks to provide a first charge over the specified unencumbered securities held by the micro finance organisation in favour of eligible clients who have made contribution of thrift.

Clause 30.—This clause provides that the Central Government may, in consultation with the National Bank from time to time, require the furnishing of such returns, statements and such other particulars in regard to the micro finance organisations in such form and in such manner as the Central Government may specify, and the micro finance organisations shall furnish to the Central Government such returns, statements and particulars.

Clause 31.—This clause provides that the Central Government may, on being satisfied that in the public interest, or in the interest of the micro finance organisation, it is necessary so to do, by order in writing declare that any or all of the provisions of the proposed legislation, shall not apply to a micro finance organisation or a class of micro finance organisations, or to any class of micro finance organisations either generally or for such period as may be specified in the order, subject to such conditions, limitations or restrictions as it may think fit to impose.

Clause 32.—This clause seeks to provide that the provisions of the proposed legislation shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Clause 33.—This clause confers power upon the Central Government to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made.

Clause 34.—This clause confers power upon the National Bank to make, with the previous approval of the Central Government, regulations consistent with the proposed legislation and the rules made thereunder, to carry out the purposes of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made by the National Bank.

Clause 35.—This clause seeks to provide for placing the rules made by the Central Government, regulations made by the National Bank and any order of exemption made under section 31, before each House of Parliament.

Clause 36.—This clause provides that the application of other laws is not barred by the provisions of the proposed legislation.

Clause 37.—This clause empowers the Central Government to make an order for removing any difficulty which may arise in giving effect to the provisions of the Act and every such order made under this clause be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for constitution of a Council to be known as the Micro Finance Development Council to advise the National Bank for Agricultural and Rural Development (National Bank) on formulation of policies, schemes and other measures required in the interest of orderly growth and development of the micro finance sector. The allowances, etc., to the Members of the Council for attending the meetings of the Council shall be made by the National Bank as may be specified by the regulation made by it. Clause 22 of the Bill provides that the Central Government may, after due appropriation made by the Parliament by law, make to the National Bank grants of such sums of money as the Central Government may think fit for being utilised for the purposes of the Bill. Clause 23 of the Bill further provides that the National Bank shall constitute a fund to be called as "the Micro Finance Development and Equity Fund" and the grants or any other sums specified therein received from the Central Government are to be credited to such fund.

2. Any grant, from the Consolidated Fund of India, to be made to the National Bank pursuant to the above provisions of the Bill will be with the due approval of the Parliament to be obtained separately. The amount of grant to be made to the National Bank from the Consolidated Fund of India cannot be estimated as it would depend upon the circumstances at the point of time of making such grant.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 33 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, (a) the area of agricultural land to be owned by farmers under sub-clause (i) of clause (b) of section 2; (b) such other categories of individuals under clause (vi) of clause (b) of section 2; (c) such other amounts and the other purposes under item (C) of sub-clause (i) of clause (f) of section 2; (d) the amount and the terms and conditions under clause (f) of section 2; (e) such other functions as may be performed by the National Bank under clause (f) of sub-section (2) of section 19; (f) any other matter which is required to be, or may be, prescribed.

2. Clause 34 of the Bill confers power upon the National Bank to make, with the previous approval of the Central Government, regulations consistent with the Act and the rules made thereunder to carry out the purposes of this Act. The matters in respect of which, such regulations may be made, relate, *inter alia*, to (a) the fees and allowances payable to a member of the Micro Finance Development Council under section 6; (b) the times and places at which the Micro Finance Development Council shall meet and observe such rules of procedure in regard to the transaction of business at its meetings under section 7; (c) the form and manner in which every micro finance organisation shall make an application for registration and the fee payable to the National Bank under sub-section (1) of section 9; (d) any other condition for grant of a certificate of registration under clause (e) of sub-section (1) of section 10; (e) the form in which the balance-sheet and profit and loss account or an income and expenditure account shall be prepared under section 15; (f) the form and the manner of return may be filed with the National Bank under section 18; (g) the procedure for winding up of the operations of the micro finance organisation under sub-section (3) of section 21; (h) the manner of management of Micro Finance Development Fund by the Board of Directors of the National Bank under sub-section (2) of section 23; (i) the terms and conditions on which the loans, refinance, grants, seed capital or any other financial assistance will be provided under clause (a) of sub-section (3) of section 23; (j) the terms and conditions on which the grants or loans will be provided under clause (b) of sub-section (3) of section 23; (k) the terms and conditions on which the investment in equity or any other form of capital or quasi-equity of a micro finance organisation shall be made under clause (c) of sub-section (3) of section 23; (l) the other expenses (except salaries, allowances and other remuneration of officers and other employees of the National Bank) of the National Bank that shall be met in connection with discharge of its functions under clause (f) of sub-section (3) of section 23; (m) such other matters for which the National Bank may consider it expedient or necessary to provide for by way of regulations.

3. The rules made by the Central Government and the regulations made by the National Bank shall be laid as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 40 OF 2007

A Bill to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent,
application
and com-
mencement.

1. (1) This Act may be called the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

(2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to citizens of India outside India.

(3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "children" includes son, daughter, grandson and grand-daughter but does not include a minor;

(b) "maintenance" includes provision for food, clothing, residence and medical attendance and treatment;

9 of 1875.

(c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, is deemed not to have attained the age of majority;

(d) "parent" means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;

(e) "prescribed" means prescribed by rules made by the State Government under this Act;

(f) "property" means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property;

(g) "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

(h) "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen;

(i) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution;

(j) "Tribunal" means the Maintenance Tribunal constituted under section 7.

3. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

Act to have overriding effect.

CHAPTER II

MAINTENANCE OF PARENTS AND SENIOR CITIZENS

4. (1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—

Maintenance of parents and senior citizens.

(i) parent or grand-parent, against one or more of his children not being a minor;

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relative is entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

5. (1) An application for maintenance under section 4, may be made—

Application for maintenance.

(a) by a senior citizen or a parent, as the case may be; or

(b) if he is incapable, by any other person or organisation authorised by him; or

(c) the Tribunal may take cognizance *suo motu*.

Explanation.— For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force. 21 of 1860.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under sub-section (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4) An application filed under sub-section (2) for the monthly allowance, for the maintenance and expenses for proceeding shall, as far as possible be disposed of within ninety days from the date of the service of notice of the application to such person.

(5) An application for maintenance under sub-section (1) may be filed against one or more persons:

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

(8) If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due.

Jurisdiction
and procedure.

6. (1) The proceedings under section 5 may be taken against any children or relative in any District—

(a) where he resides or last resided; or

(b) where children or relative resides.

(2) On receipt of the application under section 5, the Tribunal shall issue a process for procuring the presence of children or relative against whom the application is filed.

(3) For securing the attendance of children or relative the Tribunal shall have the power of a Judicial Magistrate of first class as provided under the Code of Criminal Procedure, 1973.

(4) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases:

Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or

wilfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case *ex parte*.

(5) Where the children or relative is residing out of India, the summons shall be served by the Tribunal through such authority, as the Central Government may by notification, specify in this behalf.

(6) The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.

Explanation.— For the purposes of this sub-section "Conciliation Officer" means any person or representative of an organisation referred to in *Explanation* to sub-section (1) of section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of section 18 or any other person nominated by the Tribunal for this purpose.

7. (1) The State Government may, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.

Constitution
of Maintenance
Tribunal.

(2) The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.

(3) Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

8. (1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

Summary
procedure in
case of inquiry.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

9. (1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

Order for
maintenance.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

10. (1) On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance under section 5, for the maintenance ordered under that section to pay a monthly allowance for the maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance.

Alteration in
allowance.

(2) Where it appears to the Tribunal that, in consequence of any decision of a competent Civil Court, any order made under section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly.

11. (1) A copy of the order of maintenance and including the order regarding expenses of proceedings, as the case may be, shall be given without payment of any fee to the senior

Enforcement
of order of
maintenance.

citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by any Tribunal in any place where the person against whom it is made, such Tribunal on being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

(2) A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 and shall be executed in the manner prescribed for the execution of such order by that Code. 2 of 1974.

Option regarding maintenance in certain cases.

12. Notwithstanding anything contained in Chapter IX of the Code of Criminal Procedure, 1973, where a senior citizen or a parent is entitled for maintenance under the said Chapter and also entitled for maintenance under this Act may, without prejudice to the provisions of Chapter IX of the said Code, claim such maintenance under either of those Acts but not under both. 2 of 1974.

Deposit of maintenance amount.

13. When an order is made under this Chapter, the children or relative who is required to pay any amount in terms of such order shall, within thirty days of the date of announcing the order by the Tribunal, deposit the entire amount ordered in such manner as the Tribunal may direct.

Award of interest where any claim is allowed.

14. Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five per cent. and not more than eighteen per cent.:

Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal. 2 of 1974.

Constitution of Appellate Tribunal.

15. (1) The State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.

(2) The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.

Appeals.

16. (1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.

17. Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner.

Right to legal representation.

18. (1) The State Government shall designate the District Social Welfare Officer or an officer not below the rank of a District Social Welfare Officer, by whatever name called as Maintenance Officer.

Maintenance Officer.

(2) The Maintenance Officer referred to in sub-section (1), shall represent a parent if he so desires, during the proceedings of the Tribunal, or the Appellate Tribunal, as the case may be.

CHAPTER III

ESTABLISHMENT OF OLDAGE HOMES

19. (1) The State Government may establish and maintain such number of oldage homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent.

Establishment of oldage homes.

(2) The State Government may, prescribe a scheme for management of oldage homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.

Explanation.—For the purposes of this section, "indigent" means any senior citizen who is not having sufficient means, as determined by the State Government, from time to time, to maintain himself.

CHAPTER IV

PROVISIONS FOR MEDICAL CARE OF SENIOR CITIZEN

20. The State Government shall ensure that,—

(i) the Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens as far as possible;

(ii) separate queues be arranged for senior citizens;

(iii) facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens;

(iv) research activities for chronic elderly diseases and ageing is expanded;

(v) there are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.

Medical support for senior citizen.

CHAPTER V

PROTECTION OF LIFE AND PROPERTY OF SENIOR CITIZEN

21. The State Government shall, take all measures to ensure that—

(i) the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals;

(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;

Measures for publicity, awareness, etc., for welfare of senior citizen.

(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.

Authorities who may be specified for implementing the provisions of this Act.

22. (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

Transfer of property to be void in certain circumstances.

23. (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

CHAPTER VI

OFFENCES AND PROCEDURE FOR TRIAL

Exposure and abandonment of senior citizen.

24. Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both.

Cognizance of offences.

25. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 2 of 1974. every offence under this Act shall be cognizable and bailable.

(2) An offence under this Act shall be tried summarily by a Magistrate.

CHAPTER VII

MISCELLANEOUS

Officers to be public servants.

26. Every officer or staff appointed to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Jurisdiction of civil courts barred.

27. No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.

Protection of action taken in good faith.

28. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Governments or the local authority or any officer of the Government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules or orders made thereunder.

Power to remove difficulties

29. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

30. The Central Government may give directions to State Governments as to the carrying into execution of the provisions of this Act.

Power of
Central
Government to
give directions.

31. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power of State
Government to
make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of section 8;

(b) the power and procedure of the Tribunal for other purposes under sub-section (2) of section 8;

(c) the maximum maintenance allowance which may be ordered by the Tribunal under sub-section (2) of section 9;

(d) the scheme for management of oldage homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section (2) of section 19;

(e) the powers and duties of the authorities for implementing the provisions of this Act, under sub-section (1) of section 22;

(f) a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;

(g) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two houses or where such legislature consists of one House before that House.

STATEMENT OF OBJECTS AND REASONS

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of children or their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for—

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 9th March, 2007.

MEIRA KUMAR.

Notes on Clauses

Clause 1 provides for short title, extent, application and commencement of the proposed legislation. The proposed legislation shall apply to all citizens of India except the State of Jammu and Kashmir and it shall also apply to the citizens of India who are outside India.

Clause 2 seeks to define certain words and expressions used in the Bill.

Clause 3 provides that the Bill to have overriding effect on the provisions of any other Acts which are inconsistent with the provision of the present Bill.

Clause 4 provides for entitlement for maintenance by a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him against one or more of his children not being a minor and in the case of a childless senior citizen against his relatives who would inherit his property.

Clause 5 *inter alia* provides for making application for maintenance by a senior citizen or a parent and if he is incapable, by any other person or organisation authorised by him. The Tribunal may also take cognizance *suo motu*. It empowers the Tribunal to make monthly allowance during the pendency of the proceeding. It provides that an application for monthly allowance shall as far as possible be disposed of within ninety days from the date of the service of notice of the application. It also provides that an application for maintenance made against one or more persons and the children or relative may implead the other person liable to maintain, and the death of one of them does not affect the liability of others.

Clause 6 *inter alia* provides that an application for maintenance may be made by a senior citizen or parent against any children or relative in any district where the senior citizen or parent resides or where the children or relative resides. It provides that the Tribunal has to issue a process on receipt of an application and the Tribunal will have the powers of a Judicial Magistrate first class for securing the attendance of children or relative. It also provides that the Tribunal may before hearing the application refer the same to a Conciliation Officer for amicable settlement.

Clause 7 provides that the State Government may by notification in the Official Gazette constitute one or more Tribunals for each Sub-division and the Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State and where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

Clause 8 provides that in holding any inquiry under this Act, the Tribunal may follow such summary procedure as it deems fit and for the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling the discovery and production of documents, the Tribunal shall have the powers of a Civil Court.

Clause 9 provides that if children or relatives neglect or refuse to maintain a senior citizen, the Tribunal may on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen and the Tribunal may order the maintenance allowance as may be specified by the State Government by rules but it shall not exceed rupees ten thousand.

Clause 10 provides that on proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance, the Tribunal may make such alteration, as it thinks fit and the Tribunal may also cancel or vary the order of maintenance in consequence of an order of a Civil Court.

Clause 11 provides that a copy of the order of maintenance and expenses of proceedings shall be given to the senior citizen or parent free of cost and the order of maintenance made under this Bill will have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973.

Clause 12 provides that where a senior citizen or a parent is entitled for maintenance under this Act and also under Chapter IX of the Code of Criminal Procedure, 1973 relating to the maintenance of wives, children and parents, the parents or senior citizens will have the option to pursue their claim either under the Code of Criminal Procedure, 1973 or under the provisions of this Bill.

Clause 13 provides that the children or relatives who are required to pay any amount of maintenance ordered by the Tribunal shall deposit the entire amount within thirty days with the Tribunal in such manner as the Tribunal may direct.

Clause 14 provides that the Tribunal may direct the payment of interest of not less than five per cent. and not more than eighteen per cent. in addition to the amount of maintenance. It also provides that where an application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 is pending before a Court at the commencement of this Act, then such Court shall allow the withdrawal of such application on the request of the parent or senior citizen.

Clause 15 provides for constitution of Appellate Tribunal by the State Government presided over by an officer not below the rank of District Magistrate.

Clause 16 provides that a senior citizen or a parent aggrieved by the decision of the Tribunal has a right to prefer an appeal to the Appellate Tribunal within sixty days from the date of the order of the Tribunal. This clause also provides for procedure for hearing appeals against the orders of the Tribunal. The Tribunal shall make endeavour to decide the appeal within one month from the date of filing of appeal.

Clause 17 provides that the legal practitioners shall not participate in any of the proceedings before the Tribunals and Appellate Tribunals.

Clause 18 provides that the State Government shall designate the District Social Welfare Officer or an Officer not below the rank of a District Social Welfare Officer as Maintenance Officer who shall represent a parent if he so desires before a Tribunal or Appellate Tribunal.

Clause 19 provides that the State Government may establish the oldage homes in a phased manner for senior citizens who are poor. Further, it also provides that the State Government may prescribe a scheme for management of oldage homes including the standards and various types of services provided by them which are necessary for medical care and entertainment.

Clause 20 provides that the State Government shall ensure that beds be provided for all senior citizens in Government hospitals or hospitals funded fully or partially by the Government as far as possible. It also provides that separate queues be arranged for senior citizens; facility for treatment of chronic, terminal and degenerative diseases and research activities for chronic diseases shall be expanded and also facilities for geriatric patients in every district hospital shall be earmarked.

Clause 21 provides that the State Government shall take measures to give wide publicity through public media including the television, radio and the print, at regular intervals, the provisions of the Bill. It also provides that the State Government shall ensure that the officers of the Central Government and State Government including the police officers and the member of the judicial service are given periodic sensitization and awareness training on the issues relating to this Bill and effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare.

Clause 22 provides that the State Government may confer such powers and impose such duties on District Magistrates to ensure that the provisions of this Bill are properly carried out and the District Magistrates may specify the officers subordinate to them who shall exercise any of the powers and perform all or any of the duties conferred and the local limits within which such powers or duties shall be carried out. It also provides that the State Government shall make a comprehensive action plan for providing protection of life and property of senior citizens.

Clause 23 provides that if a senior citizen after the commencement of the provision of this Bill, transfers his property by way of gift or otherwise with the condition that the transferee shall provide basic amenities and basic physical needs and such transferee fails or refuses to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and the transfer be declared void by the Tribunal at the option of the senior citizen. It also provides that where any senior citizen has a right to receive maintenance out of an estate or part thereof and such estate or part thereof is transferred, the right may be enforced against the transferee. It further provides that if any senior citizen is incapable of enforcing the rights, action may be taken on his behalf by any of the voluntary association registered under the Societies Registration Act, 1860 or any other law for the time being in force.

Clause 24 provides that any person who is having care or protection of any senior citizen intentionally abandons a senior citizen shall be liable for punishment of imprisonment up to three months or with fine which may extend to five thousand rupees.

Clause 25 provides that the offences under this Bill are cognizable and bailable and shall be tried summarily by a Magistrate.

Clause 26 provides that every officer appointed to exercise the functions under the proposed Bill shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 27 provides that the jurisdiction of the Civil Courts is barred.

Clause 28 provides that no suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government or the local authority or any officer of the Government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules or orders made thereunder.

Clause 29 provides that the State Government may by notification in the Official Gazette remove any difficulty which may arise in implementing the provisions of this Bill. The said power may be exercised by the State Government within a period of two years from the commencement of the present legislation.

Clause 30 empowers the Central Government to give directions to the State Governments for carrying into execution the provisions of the proposed legislation.

Clause 31 empowers the State Governments to make rules for carrying out the purposes of the proposed legislation. Every rule made by the respective State Governments shall be laid before the concerned State Legislature by that Government.

FINANCIAL MEMORANDUM

Clause 7(1) of the Bill provides for setting up of one or more Tribunals by the State Government for each Sub-division as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance of parents and senior citizens. Clause 7(2) provides that the Tribunal would be presided over by an officer not below the rank of Sub-Divisional officer of a State. Further, clause 15(1) provides that the State Government may by notification in the Official Gazette constitute one Appellate Tribunal for each district. Clause 15(2) provides that the Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate. Since the Bill proposes to utilise the existing machinery of the State Government, there would not be any additional expenditure.

2. Clause 19(1) of the Bill provides that the State Governments may establish and maintain such number of oldage homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent. Clause 19(2) provides that the State Governments may prescribe a scheme for management of oldage homes. Since the projects will be implemented in a phased manner, there would be no immediate financial implications on the Consolidated Fund of India.

3. Clause 20 of the Bill provides for provision of better medical facilities to the senior citizens by the State Governments. Clause 21 provides for the State Governments to institutionalise a mechanism for protection of life and property of the senior citizens. Since the existing infrastructure will be utilised for achieving these objectives, no additional expenditure is expected to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 29 of the Bill empowers the State Government to issue orders for removing any difficulty arising in giving effect to the provisions of this Act, as appear to it to be necessary or expedient and not inconsistent with the provisions of this Act, by publishing the same in the Official Gazette.

Clause 30 of the Bill empowers the Central Government to give directions to the State Government as to carrying into execution of the provisions of this Act.

Clause 31 of the Bill empowers the State Government to make rules to carryout the provisions of the Act. Sub-clause (2) of that clause enumerates the matter with respect to which rules may be made under this clause.

These matters relate to, *inter alia*, prescribe the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of section 8; the powers and procedure of the Tribunal for the purpose of sub-section (2) of section 8; the maximum maintenance allowance which may be ordered under sub-section (2) of section 9; the scheme for management of oldage homes including the standards of various types of services to be provided by them under sub-section (2) of section 19; the powers and duties of authorities for implementing the provisions of this Act under sub-section (1) of section 22; a comprehensive action plan for protection of life and property of senior citizens under sub-section (2) of section 22.

Sub-clause (3) of clause 31 of the Bill provides for laying of the rules before each House of the State Legislature where it consists of two Houses or where such Legislature consists of one House before that House.

The matters in respect of which rules and orders may be made are matters of administrative details and procedure and, it is not practicable to make provisions for them in the Bill. The delegation of legislative power is, therefore, of a normal character.

P. D. T. ACHARY,
Secretary-General.